



General Assembly

January Session, 2017

## ***Amendment***

LCO No. 7228



Offered by:

SEN. LOONEY, 11<sup>th</sup> Dist.

SEN. FASANO, 34<sup>th</sup> Dist.

SEN. GERRATANA, 6<sup>th</sup> Dist.

To: Senate Bill No. 442

File No. 608

Cal. No. 329

### ***"AN ACT CLARIFYING THE RIGHT TO ENFORCE ANTITRUST LAWS."***

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective from passage*) In any action brought  
4 under subsection (c) of section 35-32 of the general statutes or seeking  
5 treble damages under section 35-35 of the general statutes, a defendant  
6 that sells, distributes or otherwise disposes of any drug or device, as  
7 defined in 21 USC 321, as amended from time to time:

8 (1) May not assert as a defense that the defendant did not deal  
9 directly with the person on whose behalf the action is brought; and

10 (2) May, in order to avoid duplicative liability, prove, as a partial or  
11 complete defense against a damage claim, that all or any part of an  
12 alleged overcharge for a drug or device ultimately was passed on to

13 another person by a purchaser or a seller in the chain of manufacture,  
14 production or distribution of the drug or device that paid the alleged  
15 overcharge.

16 Sec. 2. Section 38a-477f of the general statutes is repealed and the  
17 following is substituted in lieu thereof (*Effective October 1, 2017*):

18 (a) On and after January 1, 2016, no contract entered into or  
19 renewed between a health care provider and a health carrier shall  
20 contain a provision prohibiting disclosure of (1) billed or allowed  
21 amounts, reimbursement rates or out-of-pocket costs, [and] or (2) any  
22 data to the all-payer claims database program established under  
23 section 38a-1091. [for the purpose of assisting] Information described  
24 in subdivisions (1) and (2) of this subsection may be used to assist  
25 consumers and institutional purchasers in making informed decisions  
26 regarding their health care and informed choices among health care  
27 providers and allow comparisons between prices paid by various  
28 health carriers to health care providers.

29 (b) On and after October 1, 2017, no contract entered into between a  
30 health care provider, or any agent or vendor retained by the health  
31 care provider to provide data or analytical services to evaluate and  
32 manage health care services provided to the health carrier's plan  
33 participants, and a health carrier shall contain a provision prohibiting  
34 disclosure of (1) billed or allowed amounts, reimbursement rates or  
35 out-of-pocket costs, or (2) any data to the all-payer claims database  
36 program established under section 38a-1091. Information described in  
37 subdivisions (1) and (2) of this subsection may be used to assist  
38 consumers and institutional purchasers in making informed decisions  
39 regarding their health care and informed choices among health care  
40 providers and allow comparisons between prices paid by various  
41 health carriers to health care providers.

42 (c) If a contract described in subsection (a) or (b) of this section,  
43 whichever is applicable, contains a provision prohibited under the  
44 applicable subsection, such provision shall be void and unenforceable.

45 The invalidity or unenforceability of any contract provision under this  
46 subsection shall not affect any other provision of the contract.

47 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) On and after January 1,  
48 2018, no contract for pharmacy services entered into in the state  
49 between a health carrier, as defined in section 38a-591a of the general  
50 statutes, or pharmacy benefits manager, as defined in section 38a-  
51 479aaa of the general statutes, and a pharmacy or pharmacist shall  
52 contain a provision prohibiting or penalizing, including through  
53 increased utilization review, reduced payments or other financial  
54 disincentives, a pharmacist's disclosure to an individual purchasing  
55 prescription medication of information regarding (1) the cost of the  
56 prescription medication to the individual, or (2) the availability of any  
57 therapeutically equivalent alternative medications or alternative  
58 methods of purchasing the prescription medication, including, but not  
59 limited to, paying a cash price, that are less expensive than the cost of  
60 the prescription medication to the individual.

61 (b) On and after January 1, 2018, no health carrier or pharmacy  
62 benefits manager shall require an individual to make a payment at the  
63 point of sale for a covered prescription medication in an amount  
64 greater than the lesser of (1) the applicable copayment for such  
65 prescription medication, (2) the allowable claim amount for the  
66 prescription medication, or (3) the amount an individual would pay  
67 for the prescription medication if the individual purchased the  
68 prescription medication without using a health benefit plan, as defined  
69 in section 38a-591a of the general statutes, or any other source of  
70 prescription medication benefits or discounts. For the purposes of this  
71 subsection, "allowable claim amount" means the maximum  
72 reimbursement dollar amount that an insured's health insurance policy  
73 allows for the prescription medication.

74 (c) Any provision of a contract that violates the provisions of this  
75 section shall be void and unenforceable. The invalidity or  
76 unenforceability of any contract provision under this subsection shall  
77 not affect any other provision of the contract.

78 (d) The Insurance Commissioner may, (1) pursuant to the  
79 provisions of chapter 697 of the general statutes, enforce the provisions  
80 of this section, and (2) upon request, audit a contract for pharmacy  
81 services for compliance with the provisions of this section."

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>from passage</i>    | New section |
| Sec. 2  | <i>October 1, 2017</i> | 38a-477f    |
| Sec. 3  | <i>October 1, 2017</i> | New section |